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November 8, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., SW, Room TWB-204
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Contact
In the Matter of the Application by New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York, CC Docket No. 99-295

Dear Ms. Salas:

On Thursday, October 28, 1999, Richard Rubin, James Bolin and I of AT&T and Michael Doss, of Sidley and Austin had a telephone conversation with Andrea Kearney, Alicia Dunnigan, Anthony Dale, and Ronald Kaufman, all of the Common Carrier Bureau. The purpose of the meeting was to discuss AT&T's Comments regarding the Section 272 separate affiliate issue as addressed in the affidavit of AT&T witness Robert Kargoll filed in this proceeding on October 19, 1999. During that meeting, the Commission staff asked AT&T to respond to several requests for information. Attached are the information requests and AT&T's responses.

Two copies of this Notice are being submitted in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Attachments

cc: A. Kearney
A. Dunnigan
A. Dale
R. Kaufman

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Request No.1. Please provide specific evidence to support the claim that, unlike Bell Atlantic, other BOCs have disclosed substantial transactions with their § 272 affiliates that took place prior to June 1998.

Response No. 1. Bell Atlantic's New York § 271 application fails to disclose any transactions between Bell Atlantic and its § 272 affiliates occurring before June 1998 other than dealings for telecommunications and voice messaging services. In stark contrast, each prior BOC § 271 application has identified substantial transactions reflecting a broad range of services the BOC applicant provided to its § 272 affiliate during the 2 1/2-year period between passage of the 1996 Act and June 1998.

For example, in its May 1997 application for interLATA authority, Ameritech disclosed 27 agreements on its Internet site, the first of which was dated August 1996.¹ Although this pre-1998 transaction disclosure was far more extensive than what Bell Atlantic offers in its New York application, the Commission expressed concern that Ameritech may have failed to publicly disclose all its affiliate transactions, and directed that Ameritech "make available for public inspection all transactions between [it and its § 272 affiliate] that occurred after February 8, 1996." Ameritech Michigan Order, ¶ 371. Similarly, by the time of Southwestern Bell's April 1997 application for interLATA authority for Oklahoma, that BOC identified 15 different broad categories of services that it provided to its § 272 affiliate.² BellSouth, the only other BOC to have previously filed applications for in-region interLATA authority, disclosed fifteen different categories of services it provided to its § 272 affiliate, at a total cost of over \$9 million, up through August 1997.³

Bell Atlantic's present application discloses no transactions with its § 272 affiliates (except for transactions concerning telephone and data services) until June 1998, despite the fact that Bell Atlantic claimed to the New York PSC as long ago as April 1997 and again in November 1997 that it had satisfied § 271 and was poised to enter the in-region interLATA market with these § 272 affiliates.

¹ Joint Affidavit of Douglas K. Goodrich and Lila K. McClelland on behalf of AT&T Corp, ¶¶ 24-25 & n.14, Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in Michigan, CC Docket 97-137.

² See Affidavit of Karol Sweitzer on behalf of Southwestern Bell Telephone Company, ¶ D (2), Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Oklahoma, CC Docket No. 97-121.

³ See, e.g., Affidavit of Victor E. Jarvis on behalf of BellSouth Corporation, at 7-11, Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231.

Request No.2. Please respond to materials and information submitted by Bell Atlantic in its October 19, 1999 ex parte responding to questions posed by the Commission staff.

Response No. 2. The materials submitted by Bell Atlantic in response to questions posed by the Commission staff further establish that Bell Atlantic and its affiliates currently violate § 272, and thus cannot establish that they will comply with § 272 if the application for in-region interLATA authority is granted. Specifically, these submissions show additional examples where Bell Atlantic has withheld information regarding its affiliate transactions that must be disclosed under § 272(b)(5), and where Bell Atlantic appears to be providing installation services for its affiliates' transmission facilities that violate § 272(b)(1).

For example, in response to the Staff request number 4, Bell Atlantic now discloses for the first time that, during the summer of 1998, it leased to BAGNI 2,219 square feet of office space, for a total of \$18,401, at property owned by New York Telephone at 1166 Avenue of the Americas, New York, NY. Bell Atlantic's only explanation for its failure to disclose this transaction before now -- despite repeated pledges in its § 271 application that all such transactions already had been disclosed -- is that this transaction was an NLD sublease of New York Telephone property through an unregulated Bell Atlantic affiliate, and Bell Atlantic only recently "determined that NLD was billed directly by New York Telephone and the transaction was treated in the CAM spreadsheet as a transaction between NLD and New York Telephone."

This explanation reflects a fundamental misunderstanding of Bell Atlantic's obligations under § 272. Bell Atlantic must comply fully with § 272 in transactions in which its assets or information are transferred to a § 272 affiliate, regardless of whether an unregulated affiliate stands between Bell Atlantic and its § 272 affiliate in the transaction.⁴ Thus, Bell Atlantic cannot evade the disclosure or nondiscrimination requirements of § 272 simply by leasing its property to an unregulated affiliate, which, in turn, subleases the property to a § 272 affiliate. Contrary to Bell Atlantic's explanation, it is irrelevant for purposes of § 272 whether NLD paid rent on New York Telephone property directly to New York Telephone or instead to a Bell Atlantic affiliate. Either transaction is equally subject to § 272.⁵

⁴ See Non-Accounting Safeguards Order ¶ 309 ("a BOC cannot circumvent the Section 272 requirements by transferring local exchange and exchange access facilities and capabilities to an affiliate"); Ameritech Michigan Order ¶ 373 (same).

⁵ This is not to say, however, that Bell Atlantic must disclose all transactions with unregulated affiliates in the same way that it must disclose such transactions with its § 272 affiliates. See Second BellSouth Louisiana Order, ¶ 338. But Bell Atlantic is required to disclose such transactions where Bell Atlantic property or information is transferred through such an unregulated affiliate and then on to a § 272 affiliate.

Bell Atlantic's apparent claim that it would be shielded from § 272 if it were to place an unregulated affiliate between it and its § 272 affiliate in such asset transactions further undermines Bell Atlantic's claims of § 272 compliance, and again calls into question the accuracy and completeness of Bell Atlantic's current disclosures. At a minimum, Bell Atlantic must demonstrate (as it has failed to do in its application) that it has fully disclosed all transactions with its § 272 affiliates where an unregulated affiliate acts as an intermediary, and that these transactions also comply with § 272's other requirements.

Bell Atlantic's ex parte submission also reveals numerous other examples of its failure to comply with § 272(b)(5). These failings provide still further evidence that Bell Atlantic's processes for identifying and disclosing transactions with its § 272 affiliates are -- and, if Bell Atlantic's application were granted, would continue to be -- inadequate to satisfy the requirements of § 272. For example, in response to the Commission staff's request number 4, Bell Atlantic discloses (again for the first time) handwritten entries that appear to be actual, rather than estimated, charges to BAGNI for certain "supplemental real estate services" provided by Bell Atlantic for BAGNI-leased facilities at 10 County Center Road, Greenburg, New York, and 5030 Broadway, New York, NY. These handwritten entries thus reflect amendments to the "estimated one time fee[s]" now listed in the Internet disclosures for these agreements, and should already have been disclosed under § 272(b)(5).⁶

Bell Atlantic's failure to disclose previously this updated transaction information (and the fact that it now is doing so only in response to specific requests from the Commission staff) strongly suggests that Bell Atlantic is withholding similar updated information regarding the many other transactions that on their face anticipate changes in the rates and fees charged to the § 272 affiliates.⁷ Without access to such updated transaction information, unaffiliated entities are unable to evaluate Bell Atlantic's compliance with § 272, to determine whether they are receiving the same services on nondiscriminatory terms and conditions, or to determine whether they might be interested in entering into similar service arrangements with Bell Atlantic.

Similarly, Bell Atlantic's ex parte submission includes a series of written agreements with its § 272 affiliates that have not been posted on the Internet (except in summary form),⁸

⁶ This failure to disclose such updates also violates § 272(c), because Bell Atlantic's § 272 affiliates obviously possess information regarding these transactions that is unavailable to unaffiliated entities. In addition, Bell Atlantic has failed to post these updated transactions on the Internet, in violation of the Accounting Safeguards Order, ¶ 122.

⁷ See Affidavit of Robert Kargoll on Behalf of AT&T Corp., ¶¶ 37-38, Application of New York Telephone Company, et al. for Authorization to Provide In-Region, InterLATA Services in New York, CC Docket 99-295 (Kargoll Affidavit).

⁸ In response to request number 1 from the Commission staff, Bell Atlantic submitted a 27-page Technical Services Agreement with its § 272 affiliates, as well as three lengthy amendments to this

in violation of the public disclosure requirements of § 272(b)(5) and the Accounting Safeguards Order, ¶ 122. Moreover, one of these agreements, a Special Construction Services Agreement with BAGNI, fails to provide appropriate rate information for these services, as required by the Ameritech Michigan Order, ¶ 369. Instead, this agreement discloses only a one-time blanket charge of \$5431.00 for construction services, without providing any information on the number of Bell Atlantic employees providing these services, their level of expertise, and their hourly rates. See Second BellSouth Louisiana Order, ¶ 337. Nor may Bell Atlantic, when providing unique services such as those reflected in the Special Construction Services Agreement, satisfy its rate-disclosure obligations simply by relying on a tariff issued for these services, which itself merely restates the total charge for the service. Such a tariff provides none of the information necessary for an unaffiliated entity to evaluate whether it is receiving similar services on the same terms and conditions as the Bell Atlantic affiliate.

Finally, this same Special Construction Services Agreement appears to reflect another instance where Bell Atlantic is providing installation services for BAGNI transmission facilities that are prohibited by § 272(b)(1).⁹ Under this agreement, Bell Atlantic commits to construct "a diversely routed fiber riser cable" at BAGNI's POP location in Philadelphia, PA. If the referenced transmission facilities are controlled by BAGNI (on which issue the disclosed agreement is silent), then Bell Atlantic is barred from providing such installation construction services under § 272(b)(1). Non-Accounting Safeguards Order, ¶ 163.

Request No.3. Please provide information concerning any particular instances in which AT&T was unable to obtain goods or services from Bell Atlantic on nondiscriminatory terms due to Bell Atlantic's failure to comply with § 272's transaction disclosure requirements.

Response No. 3. As AT&T has demonstrated, the vagueness of many of Bell Atlantic's transaction disclosures makes it impossible for unaffiliated parties to evaluate either the precise services they might be entitled to obtain from Bell Atlantic or the terms and conditions on which they could do so. Given the shortcomings of Bell Atlantic's Internet disclosures and the fact that many of them have been posted many months after the transactions at issue were completed, AT&T frankly has not sought to rely on them to a significant extent in the course of its regular business dealings. AT&T does, however, have a strong interest (as well as a statutory right) to obtain information concerning many of the types of dealings Bell Atlantic has reported, such as for OSS interfaces and real estate suitable for placing equipment that will interconnect with Bell Atlantic's network.

agreement. In response to the staff's request number 2, Bell Atlantic submitted a Special Construction Services Agreement between it and Bell Atlantic Global Networks, Inc. (BAGNI).

⁹ See Kargoll Affidavit, ¶¶ 21-28.

In addition, AT&T believes that it has been unable to obtain nondiscriminatory access to the directory assistance (DA) data that Bell Atlantic uses for its in-region national directory assistance (NDA) service, despite engaging in protracted negotiations with Bell Atlantic. As the Commission's recent NDA Order unequivocally held, NDA is an interLATA service.¹⁰ Accordingly, NDA must be provided through a § 272 affiliate, and a BOC's provision of DA data to that affiliate is subject to the nondiscrimination requirements of § 272(c) and the disclosure obligations of § 272(b)(5). Bell Atlantic, however, provides NDA on an integrated basis, and has failed to make available information concerning the terms and conditions on which it provides DA data to its own NDA operations. If this information were publicly available (as the Act requires), AT&T could at minimum have verified whether it was receiving nondiscriminatory treatment, and believes that it also could have obtained Bell Atlantic's DA data on significantly more favorable terms that Bell Atlantic has to date been willing to offer.

¹⁰ Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Petition of U S WEST Communications, Inc. for Forbearance, The Use of N11 Codes and Other Abbreviated Dialing Arrangements, FCC 99-133, CC Docket Nos. 97-172, 92-105 (released Sept. 27, 1999) ("NDA Order")